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9/25/03

Docket No.: 64965-054

PATENT

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : Customer Number: 20277  
Shashank MERCHANT, et al. : Confirmation Number: 7187  
Serial No.: 09/315,973 : Group Art Unit: 2662  
Filed: May 21, 1999 : Examiner: Anh Vu H LY

For: NETWORK SWITCH WITH MULTIPLE-PORT SNIFFING

AUG 14 2003

Technology Center 2600

REQUEST FOR RECONSIDERATION

Mail Stop Non-Fee Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This request is submitted in response to the Office Action mailed May 21, 2003.

Claims 1-19 are presented for examination. Claims 7-13 and 19 are found allowable subject to being rewritten in independent form.

Claims 1-6 and 14-18 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Gridley in view of Murthy.

This rejection is respectfully transferred for the following reasons.

Independent claim 1 recites a multiport data communication system for transferring data packets between ports. The data communication system comprises a plurality of ports for receiving and transmitting the data packets, and a decision making engine responsive to received data packets for directing the received data packets to the ports selected for transmission of the received data packets.

The decision making engine includes:

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 P.O. Box 1450  
 Alexandria, VA 22313-1450

Dear Sir:

Transmitted herewith is an Amendment in the above-identified application.



No additional fee is required.



Applicant is entitled to small entity status under 37 CFR 1.27



Also attached:

The fee has been calculated as shown below:

|                                 | NO. OF CLAIMS | HIGHEST PREVIOUSLY PAID FOR | EXTRA CLAIMS | RATE      | FEE    |
|---------------------------------|---------------|-----------------------------|--------------|-----------|--------|
| Total Claims                    | 19            | 20                          | 0            | \$18.00 = | \$0.00 |
| Independent Claims              | 2             | 3                           | 0            | \$84.00 = | \$0.00 |
| Multiple claims newly presented |               |                             |              |           | \$0.00 |
| Fee for extension of time       |               |                             |              |           | \$0.00 |
|                                 |               |                             |              |           | \$0.00 |
| Total of Above Calculations     |               |                             |              |           | \$0.00 |

Please charge my Deposit Account No. 500417 in the amount of \$0.00. An additional copy of this transmittal sheet is submitted herewith.

The Commissioner is hereby authorized to charge payment of any fees associated with this communication or credit any overpayment, to Deposit Account No. 500417, including any filing fees under 37 CFR 1.16 for presentation of extra claims and any patent application processing fees under 37 CFR 1.17.

Respectfully submitted,

MCDERMOTT, WILL &amp; EMERY

A handwritten signature in black ink, appearing to read "Alexander Yampolsky".

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 Date: August 13, 2003

-a plurality of queuing devices corresponding to the plurality of ports for queuing data blocks representing the data packets received by the corresponding ports,

-logic circuitry responsive to the plurality of queuing devices for processing the data blocks in accordance with a prescribed algorithm to determine destination information,

-a forwarding circuit responsive to the logic circuitry for identifying at least one transmit port , and

-a traffic capture mechanism for enabling one port of said plurality of ports to output data transferred via multiple other selected ports of said plurality of ports.

Independent claim 14 recites that in a communication network having a plurality of ports and a decision making engine for controlling data forwarding between the ports, a method of monitoring network activity comprises the steps of:

-placing data blocks representing received data packets in a plurality of data queues to be processed by the decision making engine,

-processing the data queues by logic circuitry in accordance with a prescribed algorithm to determine destination information,

-identifying at least one port for transmitting data packets based on the destination information,

-selecting multiple sniffed ports among the plurality of ports for monitoring the data packets transferred via the sniffed ports, and

-selecting a sniffer port among the plurality of ports to provide output of the data packets transferred via the sniffed ports.

The Examiner holds Gridley to differ from the claimed subject matter only in that the reference does not disclose the claimed traffic capture mechanism. Murthy et al. is relied upon for disclosing this element.

In particular, the Examiner considers:

-the packet RAM 135 of Gridley to correspond to the plurality of queuing devices corresponding to the plurality of ports for queuing data blocks representing the data packets received by the corresponding ports; and

-the address processor 220 to correspond to the logic circuitry responsive to the plurality of queuing devices for processing the data blocks in accordance with a prescribed algorithm to determine destination information.

Considering the reference, Gridley discloses that the packet RAM 135 serves as a packet buffer which stores the packets received through ports P1-P8 of the respective LAN while the packet processor sends the packet header of the packet stored in the packet RAM 135 to the system card (col. 3, lines 51-60).

Accordingly, the packet RAM 135 does not serve as the plurality of queuing devices corresponding to the plurality of ports for queuing data blocks representing the data packets received by the corresponding ports of the plurality of ports for receiving and transmitting the data packets.

Moreover, as one skilled in the art of data communications would understand that the buffering data packets of Gridley does not involve queuing data blocks representing the data packets, as claim 1 recites, or placing data blocks representing received data packets in a plurality of data queues, as claim 14 requires.

Further, the address processor 220 of Gridley is responsive to packet source and destination information from multiple LANs to update and access the address RAM 225 which contains an address look-up table (col. 4, lines 3-6).

Accordingly, the address processor 220 is not responsive to the plurality of queuing devices for processing the data blocks placed in data queues in accordance with a prescribed algorithm to determine destination information, as claims 1 and 14 require.

Hence, Gridley does not teach or suggest the above-discussed elements and steps recited in claims 1 and 14. As the Examiner admits, Murthy also does not disclose these elements and steps.

It is well settled that the test for obviousness is what the combined teachings of the references would have suggested to those having ordinary skill in the art. *Cable Electric Products, Inc. v. Genmark, Inc.*, 770 F.2d 1015, 226 USPQ 881 (Fed. Cir. 1985). In determining whether a case of *prima facie* obviousness exists, it is necessary to ascertain whether the prior art teachings appear to be sufficient to one of ordinary skill in the art to suggest making the claimed substitution or other modification. *In re Lalu*, 747 F.2d 703, 705, 223 USPQ 1257, 1258 (Fed. Cir. 1984).

As demonstrated above, the combined teachings of Gridley with Murthy is not sufficient to arrive at the inventions claimed in claims 1 and 14.

Moreover, in the application of a rejection under 35 U.S.C. §103, it is incumbent upon the Examiner to factually support a conclusion of obviousness. The Examiner must provide reasons why one having ordinary skill in the art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. *Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.*, 776 F.2d 281, 227 USPQ 657 (Fed. Cir. 1985). *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); *Stratoflex, Inc. v. Aeroquip*

*Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *In re Warner*, 379 F.2d 1011, 154 USPQ 173 (CCPA 1967). These showings by the Examiner are an essential part of complying with the burden of presenting a *prima facie* case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992).

The Examiner has failed to provide the requisite reasons for modifying Gridley and thus to establish a *prima facie* case of obviousness.

Gridley discloses a distributed processing system with multiprocessing configuration. The reference indicates that to avoid the complexity caused by the multiprocessing configuration, the intelligence located on each LAN is only that needed to buffer the packet, strip off the header, send it to the system card and receive back for forwarding decision (col. 5, lines 8-16). Accordingly, the reference specifically suggests avoiding mechanisms, which are not related to packet forwarding.

Hence, the reference suggests avoiding data monitoring mechanisms such as the Murthy's monitoring port arrangement. One skilled in the art would understand that a mechanism supporting a port for monitoring data at other ports would substantially complicate data processing in a multiprocessing environment.

It is well settled that if proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gorden*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). As discussed above, the Murthy's mechanism would render the Gridley invention being modified unsatisfactory for its intended purpose, which is to simplify data packet processing in a multiprocessing environment.

Accordingly, there is no suggestion or motivation for the modification suggested by the Examiner.

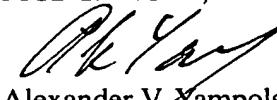
In the absence of a teaching or suggestion in the references of the details recited in claims, coupled with the lack of any motivation for the proposed combination of references to arrive at the claimed invention, it is submitted that the Examiner's conclusion of obviousness is not warranted. Applicants, therefore, respectfully request that the rejection of claims 1-6 and 14-18 under 35 U.S.C. § 103 is improper and should be withdrawn.

In view of the foregoing, and in summary, claims 1-19 are considered to be in condition for allowance. Favorable reconsideration of this application is respectfully requested.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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